

Opinion No. 55-6339

December 9, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

We have your letter of October 11th 1955, in which you request that we consider Opinion No. 6294 in the light of the information which you submitted to this office.

We are still of the opinion that the City of Tatum could enter into an agreement whereby a building was given to the City but the donor reserves the exclusive use of a room in said building. See McQuillin on Municipal Corporations, Vol. 10, Section 28.16.

We are also of the opinion that the City of Tatum could use the money as provided for by Section 72-14-14 (d), N.M.S.A., 1953, for the improvement of said building. However, there is no compulsion on the City of Tatum to so use the money.

We would point out that the information submitted to this office subsequent to our rendering the other opinion, raises some real questions as to the legality of this particular transaction. First we note that the agreement was made between the Park Commission and the donors of the building. The ordinance creating the Park Commission does not appear to have granted the Park Commission authority to accept such a gift. We should also call your attention to the fact that due to the size of the building and the space reserved for the donors this transaction may actually be construed to be a subterfuge in order to secure special benefits from the funds above mentioned for a private organization and thus would be illegal. Of course, this would depend upon the facts of the case and it would seem that a declaratory judgment should be secured in order to determine the legality of this transaction.

By: Paul L. Billhymer

Assistant Attorney General